

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2149 of 1992

AND

FIRST APPEAL No 2150 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgement?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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SHANTABEN GORDHANDAS BHATT

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

MR JD AJMERA for appellants in both these appeals.

MS MAYA DESAI for Respondent No.1-Gujarat State Road
Transport Corpn. in both these appeals.

MR PV NANAVATI for Respondent No.4-United Fire and
General Insurance Co., Rajkot in both these appeals.

No one has appeared on behalf of respondents
nos.2 and 3.

Respondent no.5 stands deleted.

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE D.A.MEHTA

Date of decision: 30/11/2000

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

Both these First Appeals filed by the original claimants are directed against the judgment and award dated 12th August 1991 passed by the Motor Accident Claims Tribunal (Main), Rajkot whereby several M.A.C. Petitions including the Motor Accident Claim Cases Nos.53/85 and 54/85 in relation to the accident dt.13.10.84 were decided. First Appeal No.2149/92 arises out of M.A.C.P. No. 54/85 and First Appeal No.2150/92 arises out of M.A.C.P No.53/85. It relates to an accident which took place on 13th Oct.1984 at or about 11.00 a.m. between Ahmedabad and Jamnagar beyond Rajkot at Paddhari. In this accident, the Gujarat State Road Transport Corporation's (GSRTC) bus, i.e. ST Luxury Bus No. GRR 9492 collided with a truck public carrier No. GTX 2603 on the said date. One Dr.Shobhanaben H. Trivedi was travelling as a bonafide passenger in the ST Luxury Bus as she was to go to Jamnagar as an Examiner for MD Examinations. In this accident, she sustained serious injuries for which she was taken up for treatment immediately but succumbed to the injuries and died on that very day, i.e. 13th Oct.1984. M.A.C. Petition No.53/85 was filed by her husband and two minor daughters namely, Nibha Harsukhbhai and Mausami Harsukhbhai and the M.A.C. Petition No. 54/85 was filed by mother of the aforesaid deceased Dr.Shobhanaben. While GSRTC is respondent no.1 in these two appeals, Manoharsinh Umedsinh Rathod resident of Rajkot, i.e. respondent no.2 is the driver of the truck, respondent no.3 namely, Bhupatbhai Ramgiri Goswami is the owner of the truck, respondent no.4 is the insurance Company and respondent no.5 Devabhai Bhimabhai is the driver of the ST Luxury Bus and the said respondent no.5 Devabhai Bhimabhai has been deleted.

2. Dr.Shobhanaben Trivedi was one of the bonafide passengers travelling in the ST Luxury bus numbered as above which was a bus going to Dwarka from Ahmedabad. It reached Rajkot and thereafter when it left for Jamnagar to go to Dwarka, near Paddhari, it collided with truck No. GTX 2603 coming from the opposite direction and as a result of this accident, Dr.Shobhanaben who was one of the passengers died as stated above. The allegations were that the bus as well as the truck were being driven in a rash and negligent manner; the present accident

claims were filed by the mother of the deceased Dr. Shobhanaben and by her husband and two minor daughters; the mother Shantaben claimed a compensation of Rs.1,50,000/= whereas in the claim petition of the husband and two minor daughters, a sum of Rs.4,00,000/= was claimed. It was alleged that Dr.Shobhanaben aged about 46 years was working as an Honorary Professor of Medicine in Civil Hospital, Ahmedabad and was also a Consultant Physician and Diabetologist earning a sum of Rs. 31,000/= per annum. She sustained injuries of brain and skull and died on the same day i.e. the date of the accident, i.e. 13th Oct.1984. A written statement Exh.25 was filed on behalf of the GSRTC and the driver of the ST Luxury bus contesting the claims on the grounds that in fact the driver of the truck was driving the truck at excessive speed in a rash and negligent manner and on the road divider, i.e. in the middle of the road disregarding the rules of traffic, came on the wrong side with excessive speed, the driver of the ST Luxury bus applied brake, slowed down the bus and took the bus still more on left hand side of the road, yet the truck dashed with the Luxury bus. It was also alleged that the claim was highly exaggerated and thus the claim petitions were sought to be dismissed. On behalf of the driver, owner and the Insurance Company of the truck, written statement at Exh.26 was filed contesting the allegations which led to the accident, the injuries sustained by the deceased and her age and income and these respondents have gone to the extent of saying that she was not travelling in the bus at all. It was also contended on behalf of the driver, owner and the Insurance Company that the GSRTC had paid the compensation and therefore, their claim petitions are not maintainable and it was submitted that the accident was the result of the rash and negligent driving on the part of the ST driver and there was no negligence whatsoever on the part of the driver of the truck. That the truck was being driven at a moderate speed and it was the ST Luxury bus which was being driven at the excessive speed, the driver of the bus attempted to overtake another ST bus which was proceeding ahead of it without taking care of the vehicles on the road and dashed against the truck and it has been denied that the driver of the truck could not control the vehicle. Thus, the driver, owner and the Insurance Company of the truck have tried to place the whole blame and burden on the driver of the ST luxury bus. On the basis of the pleadings of the parties, the following Issues were framed by the Tribunal and the findings were recorded in respect of each of these issues as under:

(1) Whether the applicants In affirmative, to the prove that the deceased extent of 50% on the part Shobhanaben H.Trivedi died of driver of the ST as a result of rash and/or Luxury bus and to the negligent driving of Luxury extent of 50% on the part Bus No.GRR 9492 by the of opponent no.4, driver driver of the Luxury bus of the truck no. GTX and/or public carrier No. 2603.
GTX 2603 opponent no.4?

(2) If so, whether the appli- Rs.1,30,000/= from all cants further prove that the opponents jointly they are entitled to re- and severally with inter- cover Rs.4,00,000/= or any rest @ 12% and propor- part thereof from the tionate costs of this opponents or any of them? petition in both claim cases nos.53/84 of 85 conjointly.

(3) What order? As per order below.

M.A.C.P. No. 54/85:

(1) Whether the applicant In affirmative, to the proves that deceased extent of 50% on the part Shobhanaben died as a of the driver of the ST result of rash and/or Bus No.GRR 9492 and to negligent driving of the extent of 50% on the Luxury Bus No.GRR 9492 part of the driver of the by driver of the bus and/ driver of the public or by public carrier No. carrier no. GTX 2603.
GTX-2603 by opponent no.4?

(2) If so, whether the appli- Rs.1,30,000/= with inter- cant further proves that rest @ 12% and propor- she is entitled to re- tionate costs of the cover Rs.1,50,000/= or petition from opponents any part thereof from nos.1 to 5 jointly and the opponents or any of severally in both the them? claim Cases 53/54 of 1985.

(3) What order? As per final order below.

On the basis of the findings as above, all the respondents were held to be jointly and severally liable to pay the compensation of a sum of Rs.1,30,000/= in all for both the claim petitions with interest at the rate of

12% per annum and proportionate costs against both the Claim Petitions Nos.53/85 and 54/85 conjointly.

3. Aggrieved from the above order, the appellants in both these Claim Cases have come in these two appeals challenging the order on the ground that the amount of compensation awarded by the impugned order is too less and meagre in comparison to the amount to which these claimants were actually entitled. Mr.J.D.Ajmera appearing on behalf of the appellants invited our attention to the statements made by the sole witness examined on behalf of the claimants for these two claim petitions, namely, Harsukhbhai Mahipatrai Trivedi, i.e. husband of deceased Dr.Shobhanaben who has been examined at Exh.91 on 27th Feb.1991 before the Tribunal. We find from the record that this witness has categorically stated that on the date of the accident, his wife, Dr.Shobhanaben was going to Jamnagar in the ST bus and expired in the accident; that the claimants nos.2 and 3 were his daughters who were being looked after by his wife and now he had to engage a female servant for domestic work and had to engage yet another female servant for taking care of his daughters. He has stated that he had to pay Rs.500/= per month to each of these two female servants and has also to bear the expenses for their boarding and lodging. He has named the two female servants as Ajwaliben Joshi and Parvatiben Amrutlal. He has further stated that his wife Dr.Shobhanaben was practising as a Consulting Physician at Ahmedabad and she was also rendering honorary services in the Civil Hospital wherefrom she was getting an honorarium of Rs.600/= and that she was also getting an honorarium of Rs.900/= from the ESI Hospital; as a result of consulting practice, her income was Rs.2,500-3000/=; she had a Degree in MD Medicine and was a Professor of Medicine. She was going to Jamnagar as an Examiner for MD Examination of Saurashtra University. He has also stated that the claimant in the Claim Petition No.54/85, namely, Shantaben is the mother of deceased Dr. Shobhanaben, i.e. his wife and she was the only daughter of Shantaben; that Shantaben was fully dependent upon her daughter, i.e. his wife and the age of Shantaben was 68-70 years on the date of his statement, i.e. 27th Feb.1991. He has further stated that she also had to employ a female servant on a payment of Rs.500/= per month and the name of this female servant was Mrudulaben Padia. He has then referred to the copy of the Post Mortem Note produced at Exh.92. In cross examination he has stated that his deceased wife Dr.Shobhanaben was an Income Tax payee and he has denied the suggestion that at the time of the death of his wife i.e. in the year in

which she died, her net income was found to be Rs.1,000/= only. He has denied the suggestions which were made to him with regard to the income of his wife. He has then deposed in the cross examination that his mother-in-law, i.e. mother of deceased was living separately; that she has no son. He has also stated that he had applied for consolidation of the two claim Petitions and to order for the compensation to be paid jointly. He has then stated that his wife was doing consulting work in his office (Dispensary) and that his residence is separate from the office (Dispensary). He has also given the timings of consultation with regard to his deceased wife, i.e. from 1 to 3 O'Clock and 5 to 7 O'Clock. He has denied the suggestion that the timings of consultation with regard to himself and his wife were the same. On the date of his statement, i.e. 27th Feb.1991, he has given out the age of his elder daughter as 22 years and the younger one as 18 years; that the elder one is a Doctor and the other one is studying in Medicine and both were yet to be married. He has denied the suggestions made to him with regard to employment of the female servants after the death of his wife etc. and has also deposed that his own independent monthly income was Rs.4000-5000/=.

4. Before we proceed to examine the findings of the Tribunal, it may be made clear that ad-hoc payment, if any, of any petty amount by GSRTC is hardly a ground against the maintainability of the claim petitions and the petitions could not be thrown out on that basis.

5. The Tribunal has found that it was a case in which 50% liability was on the part of the driver of the ST Luxury bus and 50% was on the part of the truck driver. So far as the income of the deceased Dr.Shobhanaben is concerned, the Tribunal has observed in para 67 that she could have earned a minimum of Rs.1,000/= per month and that the applicants had not been able to lead any documentary evidence to show that she was doing some consulting work and earning anything out of consulting practice and in absence of any positive evidence in this behalf, the Tribunal has taken the income of the deceased at the rate of Rs.1,000/= per month to be just and reasonable to assess the dependency value taking into account all the factors. Now, this aspect has been assailed before us. The reference has been made to the Income Tax Assessment Orders of the deceased Dr. Shobhanaben wherein her income is shown to be Rs.31,000/= (gross) per annum. Mr.Ajmera has made reference to Exhs.84, 85, 86, 87 and 88. As per these Assessment Orders, her net income seems to be more than Rs.18,000/= and therefore, it would be reasonable to infer that her

gross income could go up to Rs.31,000/= per annum as was deposed by her husband in his statement. The Tribunal has also wrongly found that there was no evidence on the question of consulting work done by the deceased Dr.Shobhanaben. If a Doctor is an Honorary Professor in the Civil Hospital and the ESI Hospital, for the rest of the time, no professional is expected to sit idle in normal course and there is no reason to disbelieve the statement made by her husband that she was doing consulting work from 1 O'Clock to 3 O'Clock and to 5 O'Clock to 7 O'Clock and the view taken by the Tribunal that she could have earned Rs.1,000/= only per month is not at all sustainable and the same is based on total conjectures rather than consideration of the available material on record including the Assessment Orders of the Income Tax Department which had been included in the evidence and accepted with the consent of both the sides. If she had no income from consultation, how her gross income could be Rs. 31,000/= per annum because she was earning only Rs. 900/= + 600/= = Rs.1,500/= as honorarium and in that case the question arises as to wherefrom she got the rest of the income? This by itself in our opinion is sufficient to negative the finding of the Tribunal that she had no practice as a consultant. In any case, there is no reason to disbelieve her annual gross income to be Rs.31,000/= for which the evidence of contemporaneous nature is available from official record of Income Tax Department. Therefore, taking the gross income of the deceased Dr.Shobhanaben to be Rs.31,000/= per annum at the time of the accident and looking to her age of 46 years at the time of the accident, the prospects of increase in income with more and more experience by professional Doctor have to be taken into account and we can safely consider that her income would have increased in future, had she remained alive, and it could have gone upto double at least taking its optimum value to Rs.62,000/= per annum on the basis of the principle as have been laid down and discussed in the case of G.M., K.S.R.T.Corp., Trivandrum v. Susamma Thomas and ors., reported in AIR 1994 SC 1631 wherein in para 13, the Supreme Court has observed that,

"We think having regard to the prospects of advancement in the future career, respecting which there is evidence on record, we will not be in error in making a higher estimate of monthly income at Rs.2,000/= as the gross income."

In the case before the Supreme Court, the gross monthly income of Rs.2,000/= was estimated by the Supreme Court on the basis that the present actual income was Rs.1032/= p.m. Therefore, if the income of the deceased Dr.

Shobhanaben is taken to be Rs.62,000/= per annum for the purpose of awarding compensation, one-third amount is required to be deducted therefrom and after deducting the one-third of the amount, it comes out to be Rs. 62,000/= -- Rs.20,666/= = 41,334/= per annum and applying the multiplier of 13 (45 years to 50 years) as per Second Schedule to Section 163-A of the Motor Vehicles Act instead of the multiplier of 10 as was applied by the Tribunal, it comes out to be Rs.5,37,342/=. It may be made clear that this Schedule was not there in the Act at the time when the impugned award was passed by the Motor Accident Claims Tribunal and it has come into effect only from 14th Nov.1994. That may be so, but we can certainly take guidance from this Schedule while applying the multiplier looking to factor of longevity of age and as has been laid down by the Supreme Court in the case of U.P. State Road Transport Corpn. and ors. v. Trilok Chandra and ors., reported in (1996) 3 GLR 136 equivalent of which is 1996 (2) GLH 121 (para 8), wherein it has been observed that the multipliers mentioned in this Schedule are meant for the guidance for the limited purpose. Therefore, we find it appropriate to apply the multiplier of 13 in the facts of the present case and thus the loss of dependency comes out to be Rs.5,37,342/= by taking the annual income to be Rs.41,334/= for the purpose of awarding compensation. Even if we take the round figure of Rs.41,000/= per annum instead of Rs.41,334/= per annum, it comes out to be Rs.41,000/= x 13 = 5,33,000/=. The amount of Rs.1,20,000/= against the future dependency loss would therefore go upto Rs.5,33,000/=.

6. The Tribunal has held the claimants to be entitled to compensation of Rs.10,000/= for loss of estate, amenities of life etc. but has not awarded any amount against the loss of consortium and according to us, as nothing has been awarded even against the funeral expenses and as also the expenses for bringing her from Rajkot to Ahmedabad and for pain, shock and suffering till she has survived for few hours on the date of the accident and therefore, against all these items, the claimants are at least entitled to a sum of Rs.10,000/=. Thus, adding this sum of Rs.10,000/= (loss of estate and amenities of life) + Rs. 10,000/= (against the other items as above), = Rs. 20,000/=, the total claim comes out to be Rs.5,33,000/= + Rs.20,000/= Rs.5,53,000/=. However, it is not possible for the Court to grant the compensation more than what has been claimed and therefore, in these two claim petitions, the total claim being Rs.5,50,000/=: we enhance the amount of compensation to be paid to the claimants to Rs.5,50,000/=

and accordingly we order that out of this sum of Rs.5,50,000/= against both these claim petitions out of which these two appeals have arisen, a sum of Rs.1,50,000/= be paid to the claimant appellant in First Appeal No. 2149/92, i.e. Shantaben who must be aged about 78 years by now and a sum of Rs.4,00,000/= be paid to the claimants in the other First Appeal No.2150/92, i.e. husband and two daughters of the deceased and this amount of Rs.4,00,000/= be apportioned between the husband of the deceased to the extent of 50%, i.e. Rs.2,00,000/= and the two daughters, namely, Nibha Harsukhbhai and Mausami Harsukhbhai to the extent of 25% each, i.e. Rs.1,00,000/= each. For all other items, i.e. with regard to the interest, proportionate costs, joint and several liability and deduction of deficit Court fee etc., the same terms and conditions would apply as are mentioned in the order dt.12.8.1991 passed by the Tribunal. Any amount already received by any claimant appellant shall be open to adjustment.

7. These two Appeals are therefore allowed with costs accordingly and the impugned order dated 12th August 1991, passed by the Motor Accident Claims Tribunal (Main), Rajkot is hereby modified as above with enhancement of compensation to Rs.5,50,000/= with interest and proportionate cost etc. for that of Rs.1,30,000/=. The respondents are directed to deposit the due amount (in terms of this order after taking into account the deposits, which may have already been made) at the earliest possible date but in no case, later than three months from today.

(M.R. Calla, J.)

(D.A. Mehta, J.)

Sreeram.